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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,278	12/02/2003	Eugene A. Pankake	GPNG.P-001-2	5339
21121	7590	06/29/2004	EXAMINER	
OPPEDAHL AND LARSON LLP P O BOX 5068 DILLON, CO 80435-5068			LAMB, BRENDA A	
		ART UNIT		PAPER NUMBER
				1734

DATE MAILED: 06/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	10/707,278	Applicant(s)	Ponkake
Examiner	LAMB	Group Art Unit	1734

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

### Status

- Responsive to communication(s) filed on 3/16/2004 and 12/20/2003 and 12/29/2003
- This action is **FINAL**.
- Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

- Claim(s) 2-11 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- Claim(s) 9-11 is/are allowed.
- Claim(s) 2-3 is/are rejected.
- Claim(s) 4-8 is/are objected to.
- Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

- See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.
- The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- The specification is objected to by the Examiner.
- The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119 (a)-(d)

- Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- All  Some\*  None of the CERTIFIED copies of the priority documents have been received.
- received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received:

### Attachment(s)

- Information Disclosure Statement(s), PTO-1449, Paper No(s). 12/20/2003 Interview Summary, PTO-413
- Notice of Reference(s) Cited, PTO-892
- Notice of Draftsperson's Patent Drawing Review, PTO-948
- Notice of Informal Patent Application, PTO-152
- Other \_\_\_\_\_

## Office Action Summary

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 2-3 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 8, 15, and 22 of U.S. Patent No. 6,656,529 in view of DE 4,241,792(Gorter). Pankake claims an apparatus comprising the following elements: an elongated nozzle having an elongated opening defined along its length by a flexible back seal and a metering surface defined with respect to an upward direction of travel of a substrate or roll past the elongated opening, the substrate or roll having a width, the direction of travel such that the substrate or roll first encounters the flexible back seal and later encounters the metering surface, the elongated opening having first and second ends separated by a distance, the distance less than the width of the substrate or roll; the nozzle defining a back direction away from the substrate or roll and a front direction toward the substrate or roll; a first end seal at the first end of the stiffener and obviously at the first end of the nozzle supported thereon to prevent leakage of coating therefrom; a second end seal at the second end of the stiffener and obviously at the first end of the nozzle supported thereon to prevent

leakage of coating therefrom; a second end seal at the second end of the stiffener and obviously at the second end of the elongated nozzle supported thereon to prevent leakage of coating therefrom. Pankake claims the end seals contact the substrate or roll. Pankake fails to claim the first and second seal each comprised of an inner and outer walls each extending in the direction of travel and each having an edge in the direction of the substrate or roll. However, Gorter teaches end seals of an applicator having a plurality of walls, which are joined, or in close association with each other. Gorter shows each end seal of the applicator includes an inner wall and outer wall and these walls when assembled are obviously in close association at the top and bottom ends thereby reading on the claimed limitation of being joined at the top and bottom ends of the above cited walls. Therefore, it would have been obvious to modify the Pankake apparatus by substituting its end seals with another end seal assembly for containing a pool of liquid material such as shown by Gorter to obtain similar benefits to that of Gorter.

Claims 4-8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 9-11 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brenda Lamb whose telephone number is (571) 272-1231. The examiner can normally be reached on Monday thru Tuesday and Thursday thru Friday with alternate Wednesdays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Fiorilla can be reached on (571) 272-1187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



BRENDA A. LAMB  
PRIMARY EXAMINER